The Managing Director, Madhya Pradesh State Road Transport Corporation, Bhopal (M.P.)

Vs.

Smt.Hemlata & others

S.B. CIVIL MISC. APPEAL NO.881/2006

DATED :: 13.09.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.B.S.Bhati for the appellant
Mr.R.Charan for the respondents

Owner of the offending bus involved in the fatal accident has preferred this appeal questioning the quantum of compensation awarded by the Tribunal for accidental death of Kush Kumar, 27 years in age, son of claimant No.1 and brother of claimant No.2.

Brief facts relevant for determination of the questions involved in this appeal are that on 04.04.2000 at about 12.00 noon deceased Kush Kumar, while riding a motor cycle was hit by a bus bearing registration No. MP 07 F 0030 and died instantaneously. The mother and elder brother of the deceased while stating the accident to have occurred for rash and negligent driving of the aforesaid bus submitted claim

application and for quantum of compensation, the claimants alleged that deceased was earning Rs.5,000/- while working as a mechanic of TV, Tape-recorder and Radio and was further earning Rs.1,000/- by performing religious ceremonies. The claimants further made a claim towards property damage, transportation and other non-pecuniary loss. The claim was contested with the submissions that the deceased met with his untimely end because of his own negligence and there was no fault on the part of the bus driver. After framing of necessary issues and taking the evidence produced by the claimants (the non-applicants did not produce any evidence) the Tribunal proceeded to hold in issue No.1 that the accident resulting in death of Kush Kumar was caused by rash and negligent driving of the bus and rejected the contention of negligence on the part of deceased.

Taking up quantification of compensation, the Tribunal referred to the evidence led by the claimants including the statement of mother of deceased Smt.Hemlata AW-1 and his brother Lav Kumar, AW-2 and so also a supporting witness Barkatulla Khan, AW-4, engaged in the work of electronic goods repairing and noticed that no rebuttal evidence was led by the non-applicants. In the overall circumstances of the case, the Tribunal assessed the income of the deceased at

Rs.3,000/- per month and after deducting 1/3rd therefrom towards personal expenditure of the deceased, took loss of contribution at Rs.2,000/- per month and then by application of multiplier of 12 to the multiplicand of Rs.24,000/- assessed pecuniary loss at Rs.2,88,000/-. The Tribunal further added Rs.5,000/- towards non-pecuniary loss and Rs.2,000/- towards funeral expenses and thereby made the award in the sum of Rs.2,95,000/- in favour of the claimants and allowed them interest at the rate of 9% per annum.

The quantum of compensation so awarded has been assailed in this appeal being highly excessive. Learned counsel Mr.Charan appearing for the claimants has duly supported the award and submitted that the distressed family has been deprived of its bread earner and the award in the sum of Rs.2,95,000/- cannot be said to be highly excessive and does not call for interference.

Having heard learned counsel for the parties and having perused the material placed on record and the considerations adopted by the Tribunal while making the impugned award, this Court is clearly of opinion that the award on its quantification of compensation remains on higher side and deserves suitable modification.

So far the assessment of monthly income of the deceased at Rs.3,000/- per month is concerned, such assessment calls for no interference inasmuch as the deceased has been shown to be engaged in the job work of repairing of electronic items and a reasonable earning in the sum of Rs.3,000/- per month could definitely be estimated from such skilled job. However, the Tribunal has proceeded to take entire of two-third of the income of the deceased after deducting one-third on his personal expenditure towards loss of contribution to the claimants and such assessment definitely calls for interference.

The claimants are the mother and elder brother of the deceased who was admittedly an unmarried person in 27 years of age. This Court is of opinion that in the case of the deceased being an unmarried person, the entire of two-third of his income cannot be taken as loss of contribution for parents, brothers and sisters because, having regard to future certainties as well as uncertainties, in the event of his getting married, a substantial part of income was likely to get diverted towards his own family. In such cases, ordinarily it does not sound appropriate to take more than 50% of the income of the deceased towards loss of contribution for the claimants. In this view of the matter, loss of contribution in the present case

could be taken only at Rs.1,500/- per month leading to a multiplicand of Rs.18,000/- per annum.

The Tribunal has proceeded to apply multiplier of 12 only in this case though the fact remains that the deceased was the bread earner of the family that included his mother and elder brother. In the overall facts and circumstances of the case, this Court is of opinion that interest of justice would be served by application of multiplier of 13 in place of multiplier of 12 leading to pecuniary loss figure at Rs.2,34,000/-. The claimants have been allowed only Rs.5,000/- towards non-pecuniary loss and in the circumstances of the case, it appears appropriate to allow a sum of Rs.10,000/- to the mother of the deceased and Rs.5,000/- to the brother for the loss of love, affection, company and services of the deceased. Another sum of Rs.2,000/- deserves to be allowed towards funeral expenses.

The claimants are, therefore, entitled for compensation in the sum of Rs.2,51,000/- (Rs.2,34,000/- + Rs.10,000/- + Rs.5,000/- + Rs.2,000/-) as against the sum of Rs.2,95,000/- awarded by the Tribunal and the award to that extent deserves to be modified. The Tribunal has awarded interest at the rate of 9% per annum in the award made in the year 2003 and

having regard to the overall circumstances of the case and the reduction being made herein, it appears appropriate to retain the said rate of interest. No other modification is called for.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award is modified and in place of Rs.2,95,000/- awarded by the Tribunal the claimants are held entitled for compensation in the sum of Rs.2,51,000/- with interest at the rate of 9% per annum. There shall be no order as to costs.

(DINESH MAHESHWARI),J.

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